

110TH CONGRESS
2D SESSION

H. R. 7264

To amend the Internal Revenue Code of 1986 to provide for economic stabilization, capital utilization, and enterprise reform, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 3, 2008

Mr. KING of Iowa (for himself, Mrs. BACHMANN, Mr. LINDER, Mr. GINGREY, Mr. BROUN of Georgia, Ms. FOXX, Mr. ROHRABACHER, Mr. POE, Mr. SALL, and Mr. GOHMERT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to provide for economic stabilization, capital utilization, and enterprise reform, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE, ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Reliable Economic Stabilization, Capital Utilization, and
6 Enterprise Reform Act of 2008”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title, etc.

TITLE I—INCENTIVES FOR ECONOMIC STABILIZATION AND
 CAPITAL UTILIZATION

Sec. 101. Reduction in capital gain rate for sales and exchanges for certain troubled assets.

Sec. 102. 5-year carryback of losses.

Sec. 103. Incentives to reinvest foreign earnings in United States.

Sec. 104. Gain or loss from sale or exchange of certain preferred stock.

Sec. 105. Repeal of Community Reinvestment Act.

Sec. 106. Net worth certificate program.

TITLE II—GOVERNMENT-SPONSORED ENTERPRISES FREE
 MARKET REFORM

Sec. 201. Short title.

Sec. 202. Definitions.

Sec. 203. Termination of current conservatorship.

Sec. 204. Limitation of enterprise authority upon emergence from conservatorship.

Sec. 205. Requirement to periodically renew charter until wind down and dissolution.

Sec. 206. Required wind down of operations and dissolution of enterprise.

3 **TITLE I—INCENTIVES FOR ECO-**
 4 **NOMIC STABILIZATION AND**
 5 **CAPITAL UTILIZATION**

6 **SEC. 101. REDUCTION IN CAPITAL GAIN RATE FOR SALES**
 7 **AND EXCHANGES FOR CERTAIN TROUBLED**
 8 **ASSETS.**

9 (a) IN GENERAL.—Part I of subchapter P of chapter
 10 1 of the Internal Revenue Code of 1986 (relating to treat-
 11 ment of capital gains) is amended by adding at the end
 12 the following new section:

1 **“SEC. 1203. GAIN ON TROUBLED ASSETS.**

2 “(a) IN GENERAL.—Gross income shall not include
3 the applicable percentage of any gain from the sale or ex-
4 change of a troubled asset held for more than 1 year.

5 “(b) APPLICABLE PERCENTAGE.—For purposes of
6 subsection (a), the applicable percentage shall be deter-
7 mined in accordance with the following table:

After:	“In the case of sales and exchanges— Before:	The applicable percentage is:
Date of enactment of this sec- tion	End of 2-year period begin- ning on such date	100 percent
End of such 2-year period	End of 4-year period begin- ning on such date	67 percent
End of such 4-year period	End of 6-year period begin- ning on such date	33 percent
End of such 6-year period	0 percent.

8 “(c) TROUBLED ASSETS.—The term ‘troubled assets’
9 means residential or commercial mortgages and any secu-
10 rities, obligations, or other instruments that are based on
11 or related to such mortgages, that in each case was origi-
12 nated or issued on or before March 14, 2008, the purchase
13 of which the Secretary determines promotes financial mar-
14 ket stability and which are acquired after the date of en-
15 actment of this section and before January 1, 2010.”.

16 (b) CONFORMING AMENDMENT.—The table of sec-
17 tions for part I of subchapter P of chapter 1 of such Code
18 is amended by adding at the end the following new item:

“Sec. 1203. Gain on troubled assets.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to sales and exchanges after the
3 date of the enactment of this Act.

4 **SEC. 102. 5-YEAR CARRYBACK OF LOSSES.**

5 (a) IN GENERAL.—Subparagraph (H) of section
6 172(b)(1) of the Internal Revenue Code of 1986 is amend-
7 ed to read as follows:

8 “(H) 5-YEAR CARRYBACK OF CERTAIN
9 LOSSES.—

10 “(i) TAXABLE YEARS ENDING DURING
11 2001 AND 2002.—In the case of a net oper-
12 ating loss for any taxable year ending dur-
13 ing 2001 or 2002, subparagraph (A)(i)
14 shall be applied by substituting ‘5’ for ‘2’
15 and subparagraph (F) shall not apply.

16 “(ii) TAXABLE YEARS ENDING DUR-
17 ING 2007, 2008, AND 2009.—In the case of
18 a net operating loss for any taxable year
19 ending during 2007, 2008, or 2009—

20 “(I) subparagraph (A)(i) shall be
21 applied by substituting ‘5’ for ‘2’,

22 “(II) subparagraph (E)(ii) shall
23 be applied by substituting ‘4’ for ‘2’,
24 and

1 “(III) subparagraph (F) shall not
2 apply.”.

3 (b) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT
4 ON CERTAIN NOL CARRYBACKS AND CARRYOVERS.—

5 (1) IN GENERAL.—Subclause (I) of section
6 56(d)(1)(A)(ii) of such Code is amended—

7 (A) by inserting “and 2007, 2008, or
8 2009” after “2001 or 2002”, and

9 (B) by inserting “and 2007, 2008, and
10 2009” after “2001 and 2002”.

11 (2) CONFORMING AMENDMENT.—Subclause (I)
12 of section 56(d)(1)(A)(i) of such Code is amended by
13 inserting “amount of such” before “deduction de-
14 scribed in clause (ii)(I)”.

15 (c) ANTI-ABUSE RULES.—The Secretary of the
16 Treasury or the Secretary’s designee shall prescribe such
17 rules as are necessary to prevent the abuse of the purposes
18 of the amendments made by this section, including
19 antistuffing rules, antichurning rules (including rules re-
20 lating to sale-leasebacks), and rules similar to the rules
21 under section 1091 of the Internal Revenue Code of 1986
22 relating to losses from wash sales.

23 (d) EFFECTIVE DATES.—

24 (1) SUBSECTION (a).—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), the amendments made by
3 subsection (a) shall apply to net operating
4 losses arising in taxable years ending in 2007,
5 2008, or 2009.

6 (B) ELECTION.—In the case of any tax-
7 payer with a net operating loss for a taxable
8 year ending during 2007 or 2008—

9 (i) any election made under section
10 172(b)(3) of the Internal Revenue Code of
11 1986 may not withstanding such section)
12 be revoked before October 15, 2009, and

13 (ii) any election made under section
14 172(j) of such Code shall (notwithstanding
15 such section) be treated as timely made if
16 made before October 15, 2009.

17 (2) SUBSECTION (b).—The amendments made
18 by subsection (b) shall apply to taxable years ending
19 after December 31, 2006.

20 **SEC. 103. INCENTIVES TO REINVEST FOREIGN EARNINGS IN**
21 **UNITED STATES.**

22 (a) IN GENERAL.—Section 965 of the Internal Rev-
23 enue Code of 1986 is amended to read as follows:

24 **“SEC. 965. DEDUCTION FOR DIVIDENDS RECEIVED.**

25 **“(a) DEDUCTION.—**

1 “(1) IN GENERAL.—In the case of a corpora-
2 tion which is a United States shareholder and for
3 which the election under this section is in effect for
4 the taxable year, there shall be allowed as a deduc-
5 tion an amount equal to the applicable percentage of
6 cash dividends which are received during such tax-
7 able year by such shareholder from controlled for-
8 eign corporations.

9 “(2) APPLICABLE PERCENTAGE.—For purposes
10 of paragraph (1)—

11 “(A) IN GENERAL.—Except as provided by
12 subparagraph (B), the term ‘applicable percent-
13 age’ means 85 percent.

14 “(B) DISTRESSED DEBT.—In the case of
15 dividends received with respect to which the re-
16 quirements of subsection (b)(4)(B) are met,
17 such term means 100 percent.

18 “(3) DIVIDENDS PAID INDIRECTLY FROM CON-
19 TROLLED FOREIGN CORPORATIONS.—If, within the
20 taxable year for which the election under this section
21 is in effect, a United States shareholder receives a
22 cash distribution from a controlled foreign corpora-
23 tion which is excluded from gross income under sec-
24 tion 959(a), such distribution shall be treated for
25 purposes of this section as a cash dividend to the ex-

1 tent of any amount included in income by such
2 United States shareholder under section
3 951(a)(1)(A) as a result of any cash dividend during
4 such taxable year to—

5 “(A) such controlled foreign corporation
6 from another controlled foreign corporation that
7 is in a chain of ownership described in section
8 958(a), or

9 “(B) any other controlled foreign corpora-
10 tion in such chain of ownership, but only to the
11 extent of cash distributions described in section
12 959(b) which are made during such taxable
13 year to the controlled foreign corporation from
14 which such United States shareholder received
15 such distribution.

16 “(b) LIMITATIONS.—

17 “(1) IN GENERAL.—The amount of dividends
18 taken into account under subsection (a) shall not ex-
19 ceed the greater of—

20 “(A) \$500,000,000,

21 “(B) the amount shown on the applicable
22 financial statement as earnings permanently re-
23 invested outside the United States, or

24 “(C) in the case of an applicable financial
25 statement which fails to show a specific amount

1 of earnings permanently reinvested outside the
2 United States and which shows a specific
3 amount of tax liability attributable to such
4 earnings, the amount equal to the amount of
5 such liability divided by 0.35.

6 The amounts described in subparagraphs (B) and
7 (C) shall be treated as being zero if there is no such
8 statement or such statement fails to show a specific
9 amount of such earnings or liability, as the case may
10 be.

11 “(2) DIVIDENDS MUST BE EXTRAORDINARY.—

12 The amount of dividends taken into account under
13 subsection (a) shall not exceed the excess (if any)
14 of—

15 “(A) the cash dividends received during
16 the taxable year by such shareholder from con-
17 trolled foreign corporations, over

18 “(B) the sum of—

19 “(i) the dividends received during the
20 base period year by such shareholder from
21 controlled foreign corporations,

22 “(ii) the amounts includible in such
23 shareholder’s gross income for the base pe-
24 riod year under section 951(a)(1)(B) with

1 respect to controlled foreign corporations,
2 and

3 “(iii) the amounts that would have
4 been included for the base period year but
5 for section 959(a) with respect to con-
6 trolled foreign corporations.

7 The amount taken into account under clause
8 (iii) for the base period year shall not include
9 any amount which is not includible in gross in-
10 come by reason of an amount described in
11 clause (ii) with respect to a prior taxable year.
12 Amounts described in subparagraph (B) for the
13 base period year shall be such amounts as
14 shown on the most recent return filed for such
15 year; except that amended returns filed after
16 June 30, 2007, shall not be taken into account.

17 “(3) REDUCTION OF BENEFIT IF INCREASE IN
18 RELATED PARTY INDEBTEDNESS.—The amount of
19 dividends which would (but for this paragraph) be
20 taken into account under subsection (a) shall be re-
21 duced by the excess (if any) of—

22 “(A) the amount of indebtedness of the
23 controlled foreign corporation to any related
24 person (as defined in section 954(d)(3)) as of

1 the close of the taxable year for which the elec-
2 tion under this section is in effect, over

3 “(B) the amount of indebtedness of the
4 controlled foreign corporation to any related
5 person (as so defined) as of the close of Sep-
6 tember 26, 2008.

7 All controlled foreign corporations with respect to
8 which the taxpayer is a United States shareholder
9 shall be treated as 1 controlled foreign corporation
10 for purposes of this paragraph. The Secretary may
11 prescribe such regulations as may be necessary or
12 appropriate to prevent the avoidance of the purposes
13 of this paragraph, including regulations which pro-
14 vide that cash dividends shall not be taken into ac-
15 count under subsection (a) to the extent such divi-
16 dends are attributable to the direct or indirect trans-
17 fer (including through the use of intervening entities
18 or capital contributions) of cash or other property
19 from a related person (as so defined) to a controlled
20 foreign corporation.

21 “(4) REQUIREMENTS.—

22 “(A) REQUIREMENT TO INVEST IN UNITED
23 STATES.—Except as provided by subparagraph
24 (B), subsection (a) shall not apply to any divi-
25 dend received by a United States shareholder

1 unless the amount of the dividend is invested in
2 the United States pursuant to a domestic rein-
3 vestment plan which—

4 “(i) is approved by the taxpayer’s
5 president, chief executive officer, or com-
6 parable official before the payment of such
7 dividend and subsequently approved by the
8 taxpayer’s board of directors, management
9 committee, executive committee, or similar
10 body, and

11 “(ii) provides for the reinvestment of
12 such dividend in the United States (other
13 than as payment for executive compensa-
14 tion), including as a source for the funding
15 of worker hiring and training, infrastruc-
16 ture, research and development, capital in-
17 vestments, or the financial stabilization of
18 the corporation for the purposes of job re-
19 tention or creation.

20 “(B) DISTRESSED DEBT.—The require-
21 ments of this subparagraph are met if amounts
22 repatriated are invested in distressed debt (as
23 defined by the Secretary) for at least one year.

24 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
25 poses of this section—

1 “(1) APPLICABLE FINANCIAL STATEMENT.—

2 The term ‘applicable financial statement’ means—

3 “(A) with respect to a United States
4 shareholder which is required to file a financial
5 statement with the Securities and Exchange
6 Commission (or which is included in such a
7 statement so filed by another person), the most
8 recent audited annual financial statement (in-
9 cluding the notes which form an integral part
10 of such statement) of such shareholder (or
11 which includes such shareholder)—

12 “(i) which was so filed on or before
13 June 30, 2007, and

14 “(ii) which was certified on or before
15 June 30, 2007, as being prepared in ac-
16 cordance with generally accepted account-
17 ing principles, and

18 “(B) with respect to any other United
19 States shareholder, the most recent audited fi-
20 nancial statement (including the notes which
21 form an integral part of such statement) of
22 such shareholder (or which includes such share-
23 holder)—

24 “(i) which was certified on or before
25 June 30, 2007, as being prepared in ac-

1 cordance with generally accepted account-
2 ing principles, and

3 “(ii) which is used for the purposes of
4 a statement or report—

5 “(I) to creditors,

6 “(II) to shareholders, or

7 “(III) for any other substantial
8 nontax purpose.

9 “(2) BASE PERIOD YEAR.—

10 “(A) IN GENERAL.—The base period year
11 is the first taxable year ending in 2007.

12 “(B) MERGERS, ACQUISITIONS, ETC.—

13 “(i) IN GENERAL.—Rules similar to
14 the rules of subparagraphs (A) and (B) of
15 section 41(f)(3) shall apply for purposes of
16 this paragraph.

17 “(ii) SPIN-OFFS, ETC.—If there is a
18 distribution to which section 355 (or so
19 much of section 356 as relates to section
20 355) applies during the base period year
21 and the controlled corporation (within the
22 meaning of section 355) is a United States
23 shareholder—

24 “(I) the controlled corporation
25 shall be treated as being in existence

1 during the period that the distributing
2 corporation (within the meaning of
3 section 355) is in existence, and

4 “(II) for purposes of applying
5 subsection (b)(2) to the controlled cor-
6 poration and the distributing corpora-
7 tion, amounts described in subsection
8 (b)(2)(B) which are received or in-
9 cludible by the distributing corpora-
10 tion or controlled corporation (as the
11 case may be) before the distribution
12 referred to in subclause (I) from a
13 controlled foreign corporation shall be
14 allocated between such corporations in
15 proportion to their respective interests
16 as United States shareholders of such
17 controlled foreign corporation imme-
18 diately after such distribution.

19 Subclause (II) shall not apply if neither
20 the controlled corporation nor the distrib-
21 uting corporation is a United States share-
22 holder of such controlled foreign corpora-
23 tion immediately after such distribution.

24 “(3) DIVIDEND.—The term ‘dividend’ shall not
25 include amounts includible in gross income as a divi-

1 dend under section 78, 367, or 1248. In the case of
2 a liquidation under section 332 to which section
3 367(b) applies, the preceding sentence shall not
4 apply to the extent the United States shareholder
5 actually receives cash as part of the liquidation.

6 “(4) COORDINATION WITH DIVIDENDS RE-
7 CEIVED DEDUCTION.—No deduction shall be allowed
8 under section 243 or 245 for any dividend for which
9 a deduction is allowed under this section.

10 “(5) CONTROLLED GROUPS.—

11 “(A) IN GENERAL.—All United States
12 shareholders which are members of an affiliated
13 group filing a consolidated return under section
14 1501 shall be treated as one United States
15 shareholder.

16 “(B) APPLICATION OF \$500,000,000
17 LIMIT.—All corporations which are treated as a
18 single employer under section 52(a) shall be
19 limited to one \$500,000,000 amount in sub-
20 section (b)(1)(A), and such amount shall be di-
21 vided among such corporations under regula-
22 tions prescribed by the Secretary.

23 “(C) PERMANENTLY REINVESTED EARN-
24 INGS.—If a financial statement is an applicable
25 financial statement for more than 1 United

1 States shareholder, the amount applicable
2 under subparagraph (B) or (C) of subsection
3 (b)(1) shall be divided among such shareholders
4 under regulations prescribed by the Secretary.

5 “(d) DENIAL OF FOREIGN TAX CREDIT; DENIAL OF
6 CERTAIN EXPENSES.—

7 “(1) FOREIGN TAX CREDIT.—No credit shall be
8 allowed under section 901 for any taxes paid or ac-
9 crued (or treated as paid or accrued) with respect to
10 the deductible portion of—

11 “(A) any dividend, or

12 “(B) any amount described in subsection
13 (a)(2) which is included in income under section
14 951(a)(1)(A).

15 No deduction shall be allowed under this chapter for
16 any tax for which credit is not allowable by reason
17 of the preceding sentence.

18 “(2) EXPENSES.—No deduction shall be al-
19 lowed for expenses properly allocated and appor-
20 tioned to the deductible portion described in para-
21 graph (1).

22 “(3) DEDUCTIBLE PORTION.—For purposes of
23 paragraph (1), unless the taxpayer otherwise speci-
24 fies, the deductible portion of any dividend or other
25 amount is the amount which bears the same ratio to

1 the amount of such dividend or other amount as the
2 amount allowed as a deduction under subsection (a)
3 for the taxable year bears to the amount described
4 in subsection (b)(2)(A) for such year.

5 “(4) COORDINATION WITH SECTION 78.—Sec-
6 tion 78 shall not apply to any tax which is not allow-
7 able as a credit under section 901 by reason of this
8 subsection.

9 “(e) INCREASE IN TAX ON INCLUDED AMOUNTS NOT
10 REDUCED BY CREDITS, ETC.—

11 “(1) IN GENERAL.—Any tax under this chapter
12 by reason of nondeductible CFC dividends shall not
13 be treated as tax imposed by this chapter for pur-
14 poses of determining—

15 “(A) the amount of any credit allowable
16 under this chapter, or

17 “(B) the amount of the tax imposed by
18 section 55.

19 Subparagraph (A) shall not apply to the credit
20 under section 53 or to the credit under section 27(a)
21 with respect to taxes which are imposed by foreign
22 countries and possessions of the United States and
23 are attributable to such dividends.

24 “(2) LIMITATION ON REDUCTION IN TAXABLE
25 INCOME, ETC.—

1 “(A) IN GENERAL.—The taxable income of
2 any United States shareholder for any taxable
3 year shall in no event be less than the amount
4 of nondeductible CFC dividends received during
5 such year.

6 “(B) COORDINATION WITH SECTION 172.—
7 The nondeductible CFC dividends for any tax-
8 able year shall not be taken into account—

9 “(i) in determining under section 172
10 the amount of any net operating loss for
11 such taxable year, and

12 “(ii) in determining taxable income
13 for such taxable year for purposes of the
14 2nd sentence of section 172(b)(2).

15 “(3) NONDEDUCTIBLE CFC DIVIDENDS.—For
16 purposes of this subsection, the term ‘nondeductible
17 CFC dividends’ means the excess of the amount of
18 dividends taken into account under subsection (a)
19 over the deduction allowed under subsection (a) for
20 such dividends.

21 “(f) ELECTION.—The taxpayer may elect to apply
22 this section to—

23 “(1) the taxpayer’s last taxable year which be-
24 gins before the date of the enactment of this section,
25 or

1 tional Mortgage Association Charter Act (12
2 U.S.C. 1716 et seq.), or

3 (B) the Federal Home Loan Mortgage
4 Corporation, established pursuant to the Fed-
5 eral Home Loan Mortgage Corporation Act (12
6 U.S.C. 1451 et seq.), and

7 (2) which—

8 (A) was held by the applicable financial in-
9 stitution on September 6, 2008, or

10 (B) was sold or exchanged by the applica-
11 ble financial institution on or after January 1,
12 2008, and before September 7, 2008.

13 (c) APPLICABLE FINANCIAL INSTITUTION.—For pur-
14 poses of this section:

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the term “applicable financial institution”
17 means—

18 (A) a financial institution referred to in
19 section 582(e)(2) of the Internal Revenue Code
20 of 1986, or

21 (B) a depository institution holding com-
22 pany (as defined in section 3(w)(1) of the Fed-
23 eral Deposit Insurance Act (12 U.S.C.
24 1813(w)(1))).

1 (2) SPECIAL RULES FOR CERTAIN SALES.—In
2 the case of—

3 (A) a sale or exchange described in sub-
4 section (b)(2)(B), an entity shall be treated as
5 an applicable financial institution only if it was
6 an entity described in subparagraph (A) or (B)
7 of paragraph (1) at the time of the sale or ex-
8 change, and

9 (B) a sale or exchange after September 6,
10 2008, of preferred stock described in subsection
11 (b)(2)(A), an entity shall be treated as an appli-
12 cable financial institution only if it was an enti-
13 ty described in subparagraph (A) or (B) of
14 paragraph (1) at all times during the period be-
15 ginning on September 6, 2008, and ending on
16 the date of the sale or exchange of the pre-
17 ferred stock.

18 (d) SPECIAL RULE FOR CERTAIN PROPERTY NOT
19 HELD ON SEPTEMBER 6, 2008.—The Secretary of the
20 Treasury or the Secretary’s delegate may extend the appli-
21 cation of this section to all or a portion of the gain or
22 loss from a sale or exchange in any case where—

23 (1) an applicable financial institution sells or
24 exchanges applicable preferred stock after Sep-
25 tember 6, 2008, which the applicable financial insti-

1 tution did not hold on such date, but the basis of
2 which in the hands of the applicable financial insti-
3 tution at the time of the sale or exchange is the
4 same as the basis in the hands of the person which
5 held such stock on such date, or

6 (2) the applicable financial institution is a part-
7 ner in a partnership which—

8 (A) held such stock on September 6, 2008,
9 and later sold or exchanged such stock, or

10 (B) sold or exchanged such stock during
11 the period described in subsection (b)(2)(B).

12 (e) REGULATORY AUTHORITY.—The Secretary of the
13 Treasury or the Secretary’s delegate may prescribe such
14 guidance, rules, or regulations as are necessary to carry
15 out the purposes of this section.

16 (f) EFFECTIVE DATE.—This section shall apply to
17 sales or exchanges occurring after December 31, 2007, in
18 taxable years ending after such date.

19 **SEC. 105. REPEAL OF COMMUNITY REINVESTMENT ACT.**

20 The Community Reinvestment Act of 1977 (12
21 U.S.C. 2901 et seq.) is hereby repealed.

22 **SEC. 106. NET WORTH CERTIFICATE PROGRAM.**

23 (a) ESTABLISHMENT; PURPOSES.—

24 (1) ESTABLISHMENT.—As soon as possible
25 after the date of the enactment of this Act, the

1 Board of Directors of the Federal Deposit Insurance
2 Corporation (in this section referred to as the “Cor-
3 poration”) shall establish a net worth certificate pro-
4 gram under this section to provide capital to insured
5 depository institutions (as such term is defined in
6 section 3 of the Federal Deposit Insurance Act (12
7 U.S.C. 1813) to assist such institutions to resolve
8 solvency problems.

9 (2) PURPOSES.—The purposes of the net worth
10 certificate program established under this section
11 shall be—

12 (A) to improve the capital position of trou-
13 bled insured depository institutions with real es-
14 tate holdings;

15 (B) to provide such insured depository in-
16 stitutions the ability to sell and restructure as-
17 sets; and

18 (C) to assist such institutions in their re-
19 covery without use of taxpayer funds.

20 (b) PRINCIPLES.—The net worth program estab-
21 lished under this section shall—

22 (1) be based upon the Federal Savings and
23 Loan Insurance Corporation net worth program es-
24 tablished under title II of the Garn-St Germain De-

1 pository Institutions Act of 1982 (Public Law 97–
2 320; 96 Stat. 1489);

3 (2) be made available only for troubled financial
4 depository institutions that the Corporation deter-
5 mines could be financially viable if provided solvency
6 assistance under the program;

7 (3) provide for the Corporation to purchase
8 capital in troubled insured depository institutions in
9 the form of subordinated debentures or net worth
10 certificates in such institutions;

11 (4) provide that insured depository institutions
12 participating in the program shall agree to such reg-
13 ulations and terms of the program as the Corpora-
14 tion shall provide, which shall include strict over-
15 sight and supervision, including limitations on the
16 compensation of senior executive officers of such in-
17 stitutions and terms for removal of officers for poor
18 management;

19 (5) provide that the Corporation shall fund net
20 worth certificates under the program by issuance of
21 Corporation senior notes and obligations to partici-
22 pating insured depository institutions;

23 (6) provide that the interest rate on net worth
24 certificates issued under the program and the senior

1 notes and obligations issued under the program by
2 the Corporation shall be identical;

3 (7) not involve any subsidy, appropriation of
4 funds, or other cash outlay or use of taxpayer funds;
5 and

6 (8) provide that asset sale transactions under
7 the program be held in the private market.

8 (c) REGULATIONS.—The Board of Directors of the
9 Corporation shall issue any regulations necessary to carry
10 out the net worth certificate program under this section.

11 **TITLE II—GOVERNMENT-SPON-**
12 **SORED ENTERPRISES FREE**
13 **MARKET REFORM**

14 **SEC. 201. SHORT TITLE.**

15 This title may be cited as the “Government-Spon-
16 sored Enterprises Free Market Reform Act of 2008”.

17 **SEC. 202. DEFINITIONS.**

18 For purposes of this title, the following definitions
19 shall apply:

20 (1) CHARTER.—The term “charter” means—

21 (A) with respect to the Federal National
22 Mortgage Association, the Federal National
23 Mortgage Association Charter Act (12 U.S.C.
24 1716 et seq.); and

1 (B) with respect to the Federal Home
2 Loan Mortgage Corporation, the Federal Home
3 Loan Mortgage Corporation Act (12 U.S.C.
4 1451 et seq.).

5 (2) DIRECTOR.—The term “Director” means
6 the Director of the Federal Housing Finance Agency

7 (3) ENTERPRISE.—The term “enterprise”
8 means—

9 (A) the Federal National Mortgage Asso-
10 ciation; and

11 (B) the Federal Home Loan Mortgage
12 Corporation.

13 (4) GUARANTEE.—The term “guarantee”
14 means, with respect to an enterprise, the credit sup-
15 port of the enterprise that is provided by the Fed-
16 eral Government through its charter as a govern-
17 ment-sponsored enterprise.

18 **SEC. 203. TERMINATION OF CURRENT CONSERVATORSHIP.**

19 (a) IN GENERAL.—Upon the expiration of the period
20 referred to in subsection (b), the Director of the Federal
21 Housing Finance Agency shall determine, with respect to
22 each enterprise, if the enterprise is financially viable at
23 that time and—

24 (1) if the Director determines that the enter-
25 prise is financially viable, immediately take all ac-

1 tions necessary to terminate the conservatorship for
2 each of the enterprises; or

3 (2) if the Director determines that the enter-
4 prise is not financially viable, immediately appoint
5 the Federal Housing Finance Agency as receiver
6 under section 1367 of the Federal Housing Enter-
7 prises Financial Safety and Soundness Act of 1992
8 and carry out such receivership under the authority
9 of such section.

10 (b) TIMING.—The period referred to in this sub-
11 section is, with respect to an enterprise—

12 (1) except as provided in paragraph (2), the 24-
13 month beginning upon the date of the enactment of
14 this Act; or

15 (2) if the Director determines before the expira-
16 tion of the period referred to in paragraph (1) that
17 the financial markets would be adversely affected
18 without the extension of such period under this
19 paragraph with respect to that enterprise, the 30-
20 month period beginning upon the date of the enact-
21 ment of this Act.

22 (c) FINANCIAL VIABILITY.—The Director may not
23 determine that an enterprise is financially viable for pur-
24 poses of subsection (a) if the Director determines that any
25 of the conditions for receivership set forth in paragraph

1 (3) or (4) of section 1367(a) of the Federal Housing En-
2 terprises Financial Safety and Soundness Act of 1992 (12
3 U.S.C. 4617(a)) exists at the time with respect to the en-
4 terprise.

5 **SEC. 204. LIMITATION OF ENTERPRISE AUTHORITY UPON**
6 **EMERGENCE FROM CONSERVATORSHIP.**

7 (a) REVISED AUTHORITY.—Upon the expiration of
8 the period referred to in section 203(b), if the Director
9 makes the determination under section 203(a)(1), the fol-
10 lowing provisions shall take effect:

11 (1) PORTFOLIO LIMITATIONS.—Subtitle B of
12 title XIII of the Housing and Community Develop-
13 ment Act of 1992 (12 U.S.C. 4611 et seq.) is
14 amended by adding at the end the following new sec-
15 tion:

16 **“SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF EN-**
17 **TERPRISES.**

18 “(a) RESTRICTION.—No enterprise shall own, as of
19 any applicable date in this subsection or thereafter, mort-
20 gage assets in excess of—

21 “(1) upon the expiration of the period referred
22 to in section 203(b) of the Government-Sponsored
23 Enterprises Free Market Reform Act of 2008,
24 \$850,000,000,000; or

1 “(2) on December 31 of each year thereafter,
2 80.0 percent of the aggregate amount of mortgage
3 assets of the enterprise as of December 31 of the
4 immediately preceding calendar year;
5 except that in no event shall an enterprise be required
6 under this section to own less than \$250,000,000,000 in
7 mortgage assets.

8 “(b) DEFINITION OF MORTGAGE ASSETS.—For pur-
9 poses of this section, the term ‘mortgage assets’ means,
10 with respect to an enterprise, assets of such enterprise
11 consisting of mortgages, mortgage loans, mortgage-related
12 securities, participation certificates, mortgage-backed
13 commercial paper, obligations of real estate mortgage in-
14 vestment conduits and similar assets, in each case to the
15 extent such assets would appear on the balance sheet of
16 such enterprise in accordance with generally accepted ac-
17 counting principles in effect in the United States as of
18 September 7, 2008 (as set forth in the opinions and pro-
19 nouncements of the Accounting Principles Board and the
20 American Institute of Certified Public Accountants and
21 statements and pronouncements of the Financial Account-
22 ing Standards Board from time to time; and without giv-
23 ing any effect to any change that may be made after Sep-
24 tember 7, 2008, in respect of Statement of Financial Ac-

1 counting Standards No. 140 or any similar accounting
2 standard).”.

3 (2) INCREASE IN MINIMUM CAPITAL REQUIRE-
4 MENT.—Section 1362 of the Federal Housing En-
5 terprises Financial Safety and Soundness Act of
6 1992 (12 U.S.C. 4612), as amended by section 1111
7 of the Housing and Economic Recovery Act of 2008
8 (Public Law 110–289), is amended—

9 (A) in subsection (a), by striking “For
10 purposes of this subtitle, the minimum capital
11 level for each enterprise shall be” and inserting
12 “The minimum capital level established under
13 subsection (g) for each enterprise may not be
14 lower than”;

15 (B) in subsection (c)—

16 (i) by striking “subsections (a) and”
17 and inserting “subsection”;

18 (ii) by striking “regulated entities”
19 the first place such term appears and in-
20 serting “Federal Home Loan Banks”;

21 (iii) by striking “for the enterprises,”;

22 (iv) by striking “, or for both the en-
23 terprises and the banks,”;

24 (v) by striking “the level specified in
25 subsection (a) for the enterprises or”; and

1 (vi) by striking “the regulated entities
2 operate” and inserting “such banks oper-
3 ate”;

4 (C) in subsection (d)(1)—

5 (i) by striking “subsections (a) and”
6 and inserting “subsection”; and

7 (ii) by striking “regulated entity”
8 each place such term appears and inserting
9 “Federal home loan bank”;

10 (D) in subsection (e), by striking “regu-
11 lated entity” each place such term appears and
12 inserting “Federal home loan bank”;

13 (E) in subsection (f)—

14 (i) by striking “the amount of core
15 capital maintained by the enterprises,”;
16 and

17 (ii) by striking “regulated entities”
18 and inserting “banks”; and

19 (F) by adding at the end the following new
20 subsection:

21 “(g) ESTABLISHMENT OF REVISED MINIMUM CAP-
22 ITAL LEVELS.—

23 “(1) IN GENERAL.—The Director shall cause
24 the enterprises to achieve and maintain adequate
25 capital by establishing minimum levels of capital for

1 the enterprises, which may include any prudential
2 standards necessary to ensure long-term institutional
3 viability and competitive equity in the market, and
4 by using such other methods as the Director deems
5 appropriate.

6 “(2) AUTHORITY.—The Director shall have the
7 authority to establish such minimum level of capital
8 for an enterprise in excess of the level specified
9 under subsection (a) as the Director, in the Direc-
10 tor’s discretion, deems to be necessary or appro-
11 priate in light of the particular circumstances of the
12 enterprise.

13 “(h) FAILURE TO MAINTAIN REVISED MINIMUM
14 CAPITAL LEVELS.—

15 “(1) UNSAFE AND UNSOUND PRACTICE OR CON-
16 DITION.—Failure of a enterprise to maintain capital
17 at or above its minimum level as established pursu-
18 ant to subsection (c) of this section may be deemed
19 by the Director, in his discretion, to constitute an
20 unsafe and unsound practice or condition within the
21 meaning of this title.

22 “(2) DIRECTIVE TO ACHIEVE CAPITAL
23 LEVEL.—

24 “(A) AUTHORITY.—In addition to, or in
25 lieu of, any other action authorized by law, in-

1 including paragraph (1), the Director may issue
2 a directive to an enterprise that fails to main-
3 tain capital at or above its required level as es-
4 tablished pursuant to subsection (c) of this sec-
5 tion.

6 “(B) PLAN.—Such directive may require
7 the enterprise to submit and adhere to a plan
8 acceptable to the Director describing the means
9 and timing by which the enterprise shall achieve
10 its required capital level.

11 “(C) ENFORCEMENT.—Any such directive
12 issued pursuant to this paragraph, including
13 plans submitted pursuant thereto, shall be en-
14 forceable under the provisions of subtitle C of
15 this title to the same extent as an effective and
16 outstanding order issued pursuant to subtitle C
17 of this title which has become final.

18 “(3) ADHERENCE TO PLAN.—

19 “(A) CONSIDERATION.—The Director may
20 consider such enterprise’s progress in adhering
21 to any plan required under this subsection
22 whenever such enterprise seeks the requisite ap-
23 proval of the Director for any proposal which
24 would divert earnings, diminish capital, or oth-

1 otherwise impede such enterprise’s progress in
2 achieving its minimum capital level.

3 “(B) DENIAL.—The Director may deny
4 such approval where it determines that such
5 proposal would adversely affect the ability of
6 the enterprise to comply with such plan.”.

7 (3) REPEAL OF INCREASES TO CONFORMING
8 LOAN LIMITS.—

9 (A) REPEAL OF TEMPORARY INCREASE IN
10 ECONOMIC STIMULUS ACT.—Section 201 of the
11 Economic Stimulus Act of 2008 (Public Law
12 110–185) is hereby repealed.

13 (B) REPEAL OF GENERAL LIMIT AND PER-
14 MANENT HIGH-COST AREA INCREASE.—Para-
15 graph (2) of section 302(b) of the Federal Na-
16 tional Mortgage Association Charter Act (12
17 U.S.C. 1717(b)(2)) and paragraph (2) of sec-
18 tion 305(a) of the Federal Home Loan Mort-
19 gage Corporation Act (12 U.S.C. 1454(a)(2))
20 are each amended to read as such sections were
21 in effect immediately before the enactment of
22 the Housing and Economic Recovery Act of
23 2008 (Public Law 110–289).

24 (C) REPEAL OF NEW HOUSING PRICE
25 INDEX.—Section 1322 of the Federal Housing

1 Enterprises Financial Safety and Soundness
2 Act of 1992, as added by section 1124(d) of the
3 Housing and Economic Recovery Act of 2008
4 (Public Law 110–289), is hereby repealed.

5 (D) REPEAL.—Section 1124 of the Hous-
6 ing and Economic Recovery Act of 2008 (Public
7 Law 110–289) is hereby repealed.

8 (E) ESTABLISHMENT OF CONFORMING
9 LOAN LIMIT.—For the year in which the expira-
10 tion of the period referred to in section 203(b)
11 of this section occurs, the limitations governing
12 the maximum original principal obligation of
13 conventional mortgages that may be purchased
14 by the Federal National Mortgage Association
15 and the Federal Home Loan Mortgage Cor-
16 poration, referred to in section 302(b)(2) of the
17 Federal National Mortgage Association Charter
18 Act (12 U.S.C. 1717(b)(2)) and section
19 305(a)(2) of the Federal Home Loan Mortgage
20 Corporation Act (12 U.S.C. 1454(a)(2)), re-
21 spectively, shall be considered to be—

22 (i) \$417,000 for a mortgage secured
23 by a single-family residence,

24 (ii) \$533,850 for a mortgage secured
25 by a 2-family residence,

1 (iii) \$645,300 for a mortgage secured
2 by a 3-family residence, and
3 (iv) \$801,950 for a mortgage secured
4 by a 4-family residence,
5 and such limits shall be adjusted effective each
6 January 1 thereafter in accordance with such
7 sections 302(b)(2) and 305(a)(2).

8 (F) PROHIBITION OF PURCHASE OF MORT-
9 GAGES EXCEEDING MEDIAN AREA HOME
10 PRICE.—

11 (i) FANNIE MAE.—Section 302(b)(2)
12 of the Federal National Mortgage Associa-
13 tion Charter Act (12 U.S.C. 1717(b)(2)) is
14 amended by adding at the end the fol-
15 lowing new sentence: “Notwithstanding
16 any other provision of this title, the cor-
17 poration may not purchase any mortgage
18 for a property having a principal obligation
19 that exceeds the median home price, for
20 properties of the same size, for the area in
21 which such property subject to the mort-
22 gage is located.”.

23 (ii) FREDDIE MAC.—Section
24 305(a)(2) of the Federal Home Loan
25 Mortgage Corporation Act (12 U.S.C.

1 1454(a)(2)) is amended by adding at the
2 end the following new sentence: “Notwith-
3 standing any other provision of this title,
4 the Corporation may not purchase any
5 mortgage for a property having a principal
6 obligation that exceeds the median home
7 price, for properties of the same size, for
8 the area in which such property subject to
9 the mortgage is located.”.

10 (4) REQUIREMENT TO PAY STATE AND LOCAL
11 TAXES.—

12 (A) FANNIE MAE.—Paragraph (2) of sec-
13 tion 309(c) of the Federal National Mortgage
14 Association Charter Act (12 U.S.C.
15 1723a(c)(2)) is amended—

16 (i) by striking “shall be exempt from”
17 and inserting “shall be subject to”; and

18 (ii) by striking “except that any” and
19 inserting “and any”.

20 (B) FREDDIE MAC.—Section 303(e) of the
21 Federal Home Loan Mortgage Corporation Act
22 (12 U.S.C. 1452(e)) is amended—

23 (i) by striking “shall be exempt from”
24 and inserting “shall be subject to”; and

1 (ii) by striking “except that any” and
2 inserting “and any”.

3 (5) REPEALS RELATING TO REGISTRATION OF
4 SECURITIES.—

5 (A) FANNIE MAE.—

6 (i) MORTGAGE-BACKED SECURI-
7 TIES.—Section 304(d) of the Federal Na-
8 tional Mortgage Association Charter Act
9 (12 U.S.C. 1719(d)) is amended by strik-
10 ing the fourth sentence.

11 (ii) SUBORDINATE OBLIGATIONS.—
12 Section 304(e) of the Federal National
13 Mortgage Association Charter Act (12
14 U.S.C. 1719(e)) is amended by striking the
15 fourth sentence.

16 (B) FREDDIE MAC.—Section 306 of the
17 Federal Home Loan Mortgage Corporation Act
18 (12 U.S.C. 1455) is amended by striking sub-
19 section (g).

20 (6) RECOUPMENT OF COSTS FOR FEDERAL
21 GUARANTEE.—

22 (A) ASSESSMENTS.—The Director of the
23 Federal Housing Finance Agency shall establish
24 and collect from each enterprise assessments in
25 the amount determined under subparagraph

1 (B). In determining the method and timing for
2 making such assessments, the Director shall
3 take into consideration the determinations and
4 conclusions of the study under subsection (b) of
5 this section.

6 (B) DETERMINATION OF COSTS OF GUAR-
7 ANTEE.—Assessments under subparagraph (A)
8 with respect to an enterprise shall be in such
9 amount as the Director determines necessary to
10 recoup to the Federal Government the full value
11 of the benefit the enterprise receives from the
12 guarantee provided by the Federal Government
13 for the obligations and financial viability of the
14 enterprise, based upon the dollar value of such
15 benefit in the market to such enterprise when
16 not operating under conservatorship or receiver-
17 ship. To determine such amount, the Director
18 shall establish a risk-based pricing mechanism
19 as the Director considers appropriate, taking
20 into consideration the determinations and con-
21 clusions of the study under subsection (b) of
22 this section.

23 (C) TREATMENT OF RECOUPED
24 AMOUNTS.—The Director shall cover into the
25 general fund of the Treasury any amounts re-

1 ceived from assessments made under this para-
2 graph.

3 (b) GAO STUDY REGARDING RECOUPMENT OF
4 COSTS FOR FEDERAL GOVERNMENT GUARANTEE.—The
5 Comptroller General of the United States shall conduct
6 a study to determine a risk-based pricing mechanism to
7 accurately determine the value of the benefit the enter-
8 prises receive from the guarantee provided by the Federal
9 Government for the obligations and financial viability of
10 the enterprises. Such study shall establish a dollar value
11 of such benefit in the market to each enterprise when not
12 operating under conservatorship or receivership, shall ana-
13 lyze various methods of the Federal Government assessing
14 a charge for such value received (including methods involv-
15 ing an annual fee or a fee for each mortgage purchased
16 or securitized), and shall make a recommendation of the
17 best such method for assessing such charge. Not later
18 than 12 months after the date of the enactment of this
19 Act, the Comptroller General shall submit to the Congress
20 a report setting forth the determinations and conclusions
21 of such study.

22 **SEC. 205. REQUIREMENT TO PERIODICALLY RENEW CHAR-**
23 **TER UNTIL WIND DOWN AND DISSOLUTION.**

24 (a) REQUIRED RENEWAL; WIND DOWN AND DIS-
25 SOLUTION UPON NON-RENEWAL.—Upon the expiration of

1 the 3-year period that begins upon the expiration of the
2 period referred to in section 203(b), unless the charter of
3 an enterprise is renewed pursuant to subsection (b) of this
4 section, section 206 (relating to wind down of operations
5 and dissolution of enterprise) shall apply to the enterprise.

6 (b) RENEWAL PROCEDURE.—

7 (1) APPLICATION; TIMING.—The Director shall
8 provide for each enterprise to apply to the Director,
9 before the expiration of the 3-year period under sub-
10 section (a), for renewal of the charter of the enter-
11 prise.

12 (2) STANDARD.—The Director shall approve
13 the application of an enterprise for the renewal of
14 the charter of the enterprise if—

15 (A) the application includes a certification
16 by the enterprise that the enterprise is finan-
17 cially sound and is complying with all provisions
18 of, and amendments made by, section 204 of
19 this title applicable to such enterprise; and

20 (B) the Director verifies that the certifi-
21 cation made pursuant to subparagraph (A) is
22 accurate.

23 (c) OPTION TO REAPPLY.—Nothing in this section
24 may be construed to require an enterprise to apply under
25 this section for renewal of the charter of the enterprise.

1 **SEC. 206. REQUIRED WIND DOWN OF OPERATIONS AND DIS-**
2 **SOLUTION OF ENTERPRISE.**

3 (a) **APPLICABILITY.**—This section shall apply to an
4 enterprise—

5 (1) upon the expiration of the 3-year period re-
6 ferred to in such section 205(a), to the extent pro-
7 vided in such section; and

8 (2) if this section has not previously applied to
9 the enterprise, upon the expiration of the 6-year pe-
10 riod that begins upon the expiration of the period re-
11 ferred to in section 203(b).

12 (b) **WIND DOWN.**—Upon the applicability of this sec-
13 tion to an enterprise, the Director and the Secretary of
14 the Treasury shall jointly take such action, and may pre-
15 scribe such regulations and procedures, as may be nec-
16 essary to wind down the operations of an enterprise as
17 an entity chartered by the United States Government over
18 the duration of the 10-year period beginning upon the ap-
19 plicability of this section to the enterprise (pursuant to
20 subsection (a)) in an orderly manner consistent with this
21 Act and the ongoing obligations of the enterprise.

22 (c) **DIVISION OF ASSETS AND LIABILITIES; AUTHOR-**
23 **ITY TO ESTABLISH HOLDING CORPORATION AND DIS-**
24 **SOLUTION TRUST FUND.**—The action and procedures re-
25 quired under subsection (b)—

1 (1) shall include the establishment and execu-
2 tion of plans to provide for an equitable division and
3 distribution of assets and liabilities of the enterprise,
4 including any liability of the enterprise to the United
5 States Government or a Federal reserve bank that
6 may continue after the end of the period described
7 in subsection (b); and

8 (2) may provide for establishment of—

9 (A) a holding corporation organized under
10 the laws of any State of the United States or
11 the District of Columbia for the purposes of the
12 reorganization and restructuring of the enter-
13 prise; and

14 (B) one or more trusts to which to trans-
15 fer—

16 (i) remaining debt obligations of the
17 enterprise, for the benefit of holders of
18 such remaining obligations; or

19 (ii) remaining mortgages held for the
20 purpose of backing mortgage-backed secu-
21 rities, for the benefit of holders of such re-
22 maining securities.

23 (d) REPEAL OF CHARTER.—Effective upon the expi-
24 ration of the 10-year period referred to in subsection (b)
25 for an enterprise, the charter for the enterprise is re-

1 pealed, except that the provisions of such charter in effect
2 immediately before such repeal shall continue to apply
3 with respect to the rights and obligations of any holders
4 of outstanding debt obligations and mortgage-backed secu-
5 rities of the enterprise.

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